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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 76

L. D. HARRIS,

*Petitioner,*

*vs.*

STATE OF SOUTH CAROLINA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH  
CAROLINA

**RESPONDENT'S BRIEF**

**Statement**

At the October, 1946, term of the Court of General Sessions for Aiken County, South Carolina, the grand jury returned an indictment against the petitioner, L. D. Harris, charging him with the murder of one Edward L. Bennett. Whereupon petitioner was forthwith duly arraigned and, being without counsel, Messrs. Julian B. Salley, Jr., Dorsey K. Lybrand and Leonard A. Williamson, attorneys of the Aiken Bar, were appointed by the Presiding Judge

to defend him. The case came on for trial at a special term of said court, convened at Aiken on the first Monday in January, 1947, and resulted in a conviction of petitioner for murder as charged in the indictment (R. 1). A motion to set aside the verdict was made upon grounds stated in the transcript of record, which motion was refused, and the death sentence was accordingly pronounced by the Presiding Judge (R. 199-200).

From this conviction, order denying motion to set aside the verdict and sentence of the court, the petitioner appealed to the Supreme Court of the State of South Carolina. That court considered on the merits all questions raised by the exceptions and, on February 18, 1948, filed its opinion affirming the judgment of the trial court. A petition for re-hearing was thereafter filed and the same was duly considered and denied by said court (R. 201-223).

The case now comes before this court on writ of certiorari to the Supreme Court of South Carolina, granted on petition wherein petitioner invokes protection under the Fourteenth Amendment of the Federal Constitution, alleging that:

"The question involved is whether the admission in evidence of the alleged confession of petitioner, L. D. Harris, was a denial of 'due process' under the Fourteenth Amendment of the Constitution of the United States."

### Argument

The contention of petitioner is that the confession of guilt here in question was not voluntarily made by him but was extorted and obtained by the use of physical violence, threats, duress, fear and intimidation, and its admission in evidence, over objection of petitioner, was a denial of "due process" under the Fourteenth Amendment of the Constitution of the United States. Whereas the position and contention of the respondent is that said

confession was freely and voluntarily made by petitioner and was, therefore, properly admissible in evidence upon his trial; and that the trial court and Supreme Court of the State of South Carolina committed no error in so ruling and holding.

The issue here involved being an intricate and an extremely grave one, we assume the court will examine in detail all the testimony revealed by the transcript of record, and the essential parts thereof having been recited and incorporated in the opinion of the Supreme Court of South Carolina (R. 202-219), we shall not encumber and unnecessarily prolong this brief with a recital and detail discussion of that testimony.

Although the record reveals other evidence, independent and corroborative of the petitioner's confession, we concede that such evidence was not sufficient, without the confession, to prove guilt beyond a reasonable doubt. The trial judge so ruled and accordingly so charged the jury, which ruling was approved by the Supreme Court (R. 213 and 216).

We cannot agree with counsel's deductions and conclusions drawn by them from the evidence, as expressed in their summary of "the panorama of events which led to the arrest, detention, confession and trial" of petitioner (Brief 2-7). While many of the facts recited in their summation are undisputed and conceded, some of the more essential are not.

We agree that the murder of Mr. and Mrs. Bennett aroused well justified indignation and interest on the part of all citizens, worthy of their citizenship in a civilized community, to apprehend and punish the murderer, and as well the murderer of the old negro man Garrett, who had likewise been robbed and shot only a few days previously. Naturally, the officers charged with enforce-

ment of the law—upon whom rests serious constitutional and statutory obligations to discover promptly those guilty of atrocious crimes—were deeply concerned and interested in apprehending the person or persons guilty of these crimes. Therefore, Sheriff Fallaw, with the aid of State Constable Thompson and Chief of Police Sprawls of the City of Aiken, entered upon their task with that end in view, which was their sworn duty to do.

It is true, as counsel state, these officers went about their work "without any planned *scientific* investigation", and so because they had not been scientifically trained in the strict meaning of the term, but, nevertheless, with an honest purpose to seek only the truth and apprehend the guilty. To that end they were necessarily compelled to interview and question many people. And, after months of investigation, they procured information to the effect that petitioner had stolen a pistol from one Annie Brown of the kind and calibre (38-short calibre) used in the shooting of Bennett, and also other information of the departure from the community and the then whereabouts of petitioner. A warrant was thereupon duly issued for the arrest of petitioner, charging him with the crime of grand larceny, and by authority thereof he was accordingly arrested and taken into custody at Nashville, Tennessee, and on the following day, July 14, 1946, Sheriff Fallaw and Constable Thompson brought him by automobile from Nashville to Aiken. These facts are not in dispute. The truth of the charge contained in the warrant was admitted by petitioner (R. 172). Hence, whether or not the officers had information sufficient to justify taking petitioner into custody on the graver crime of murder is immaterial for the reason that the larceny warrant authorized the arrest and return of petitioner to South Carolina to answer to an indictment which might be preferred against him on that charge.

Counsel complain that the warrant referred to was neither read nor the charge contained therein explained to petitioner. It is passing strange, and we might ask, if petitioner had committed no crime in South Carolina, why did he not inquire of the officers the cause of his arrest and their desire for his return to that state? And, as counsel state, the usual formality involving extradition proceedings for the return of petitioner to South Carolina was dispensed with. Petitioner voluntarily signed his waiver (R. 43).

We respectfully submit, therefore, that counsel's assertion that petitioner was arrested, taken into custody and returned to South Carolina without justification or probable cause, but on mere conjecture, is not supported by the evidence but is contrary thereto.

Counsel further assert a violation of state law by the officers in that petitioner was placed in jail upon arrival in Aiken instead of being taken before the Magistrate who issued said warrant, to be dealt with according to law, citing South Carolina Criminal Code, 1942, section 907, which is quoted in footnote on page 4 of their brief. From a casual reading of this section of the Code it will be observed that it is applicable only to cases where the accused is arrested without a warrant for the commission of a felony within the view of the person making the arrest or upon certain information received by such person that a felony has been committed. It has no application here. See recent opinion of the Supreme Court of South Carolina in the case of *State v. Miller*, 211 S. C., 306, 45 S. E. (2d) 23.

But the more important question, in fact the real issue involved, is whether or not petitioner's confession was freely and voluntarily made or obtained by coercion in the manner and by use of the methods claimed by his counsel.

The facts and testimony bearing upon and decisive of this question having been fully discussed and in part incorporated in the opinion of the South Carolina Supreme Court, we shall not restate the same here but merely supplement briefly.

In the first place we would call the court's attention to the fact that the petitioner is not a teen age boy, is not illiterate nor of low mentality; but to the contrary, he is a man twenty-five years of age (R. 190) who can write and read well and possesses a mentality well above the average; and, we submit that, as evidenced by the record, during all of the questioning to which he was subjected in the course of his trial he exhibited a self-possession, coolness and smartness which negatives the idea that he would at any time lose his freedom of thought and action and because of fear make and sign statements against his interest which are not his own.

The petitioner's return to Aiken did not bring him to a strange land, but to the place where he had been reared, worked and resided prior to his departure to Tennessee and where he then had many personal acquaintances, friends and associates.

The first interview of petitioner by officers was by the Sheriff personally at his office, which was for only a few minutes duration. All subsequent interviews and questioning occurred in the jail office, a room approximately 11 x 8 feet in size located at the entrance on the first floor of the jail, and commonly used by lawyers for conferences with clients. These facts are undisputed.

It is conceded that the weather was warm, but, we submit, no more so than is usual in Aiken (lower South Carolina) during the summer months, and that the heat was no more intense in the jail office than in other rooms or places where the petitioner was accustomed to live and work.

It is true petitioner was kept up until approximately one o'clock on Tuesday night. However, this does not mean that he was being questioned from the earlier part of the night until that late hour. Early in the evening he made a statement which in effect charged his friend, Wiley Bennett, with commission of the murder. That statement was reduced to writing and thereafter officer Thompson drove to the chain gang many miles away for Wiley Bennett and brought him back to confront Harris. After a long colloquy between the two, Harris charging Bennett with the crime and the latter denying it, the officers locked them up and left the jail. All of this, of course, consumed considerable time. On Wednesday night petitioner was again kept up until about twelve o'clock, but not because of questioning prior to his confession. As clearly appears from the uncontradicted evidence, Sheriff Fallaw called on him early in the evening and after a very short interview the confession was made. Thereafter considerable time was necessarily consumed in the typing, repeating and reading of this statement to the other officers, all as testified to by Sheriff Fallaw, Chief Sprawls and Constables Thompson and Richardson.

The record reveals that there is a sharp conflict in the testimony pertaining to this issue. As the Supreme Court of South Carolina says in its opinion, "It may be said that all of the officers testified in such manner as to carry conviction that the confession was not the result of fear, intimidation, physical force, punishment or under the influence of any promise of immunity, leniency or other reward." The petitioner testified to the contrary.

Counsel state, however, that they rely mainly upon the testimony of the officers to sustain their contention, insisting that Constable Thompson admits striking petitioner. Referring to statement made by petitioner in which he charged Wiley Bennett with the crime (all officers and peti-

tioner being seated at the time) Thompson's testimony reads thus:

"Q. What did you do when he finished making that statement?"

"A. When he finished making that statement, I got up and slapped him on his shoulder and said, 'I don't believe it.'" (R. 107-108.)

"Q. And you hit him and said, 'Boy, you are not telling the truth?'"

"A. I did not hit him. I put my hand on his shoulder through no malice whatsoever."

This incident occurred Tuesday night before petitioner made his confession to Sheriff Fallaw on Wednesday night following, and Thompson was not present when that confession was made. We submit the finding and holding of the court is fully supported by the record.

Counsel further insist that Sheriff Fallaw's statement to petitioner, relative to issuance of a warrant against his mother for transporting stolen property, justified exclusion of the confession. The Sheriff's testimony as to this is reproduced in the Supreme Court's opinion (R. 30), from which it will be noted that he did not promise petitioner anything and did not threaten to do anything to him. Petitioner does not so claim. Furthermore, in response to his own counsel's questions as to whether this incident influenced him to confess, he answered, "No sir," his testimony thereabout being as follows:

By Mr. Lybrand:

"Q. The statement that Mr. Fallaw, the Sheriff made to you about having a warrant issued for your mother—did that influence you to make the confession?"

"A: I told him it wasn't no use. I told him it wasn't no use to have her arrested for something she didn't know about and I didn't either."

“Q. Did that have any bearing or influence on you to make you make that statement?”

The Solicitor: “Don’t lead him now.”

By Mr. Lybrand:

“Q. Was there any connection with that statement by Sheriff Fallaw about having your mother arrested and your statement to him—your confession?”

“A. No, sir; he could have got her. In other words, they came over to Columbia one Saturday and I told them to go get her, for she didn’t do it.” (R. 25-26.)

Counsel quote from petitioner’s testimony, as given by him before the jury on the following day (Brief P. 10), from which it will be noted that petitioner flatly denied the material portion of the above quoted testimony. “His denial of his former testimony has such a dubious claim to veracity that we lay it aside.”

We most respectfully submit, therefore, that the State’s testimony relied upon by counsel as being undisputed is too meager and insufficient to support their contention.

The Fourteenth Amendment of the Federal Constitution leaves a state free to adopt by statute or decision such tests of the voluntariness of a confession of guilt as it may elect, whether it conform to that applied in the Federal or in other state courts; but the adoption by a state of the rule of her choice cannot foreclose inquiry as to whether, in a given case, the application of that rule works a deprivation of the prisoner’s life or liberty without due process of law.

*Brown v. Mississippi*, 297 U. S. 378, 80 L. Ed. 682; *Lisenba v. California*, 314 U. S., 219, 86 L. Ed., 166; and *Ward v. Texas*, 316 U. S., 547, 86 L. Ed. 1663.

As hereinbefore shown, petitioner was legally arrested under warrant duly issued upon a charge well founded, was placed in jail and while there held was interrogated concerning the murder here involved. His right to a prelim-

inary hearing before the Magistrate who issued the warrant, to put the State on proof and determine whether or not he should be released or held for trial in the Sessions Court, is provided for. South Carolina Criminal Code, 1942, section 935.

Counsel complain that petitioner was interrogated by the officers pertaining to the crime of murder while he was confined in jail and no warrant had been issued so charging him. In so doing, we submit, the officers were acting within the law as declared by the Supreme Court of South Carolina. See the recent case of *State v. Miller*, 211 S. C., 306, 45 S.E. (2d.), 23. When petitioner learned that he was charged with the crime of murder, the right was his to demand a preliminary hearing under the Code section above cited and thereby obtain his release if the charge was not proved by the State. Furthermore, he had the right to obtain his release under habeas corpus proceedings as provided by South Carolina law. See Code of Law of South Carolina, 1942, chapter 66.

"It is not necessary to the admissibility of a confession, to whomsoever it may have been made, that it should appear that the prisoner was warned that what he said would be used against him. On the contrary, if the confession was voluntary, it is sufficient, though it should appear that he was not warned." *State v. Miller, supra; State v. Workmen*, 15 S.C., 540.

Referring to the law of South Carolina, governing the exclusion or admission of confessions, and the trial judge's charge to the jury in this case, Mr. Justice Stukes, speaking for the Court, says:

"This was a faithful following of the established rule in this State with respect to repudiated pretrial confessions. Our last, and rather full, authority on the subject is *State v. Miller*, 1947, (211 S.C., 306), 45 S.E.

(2d.), 23, where the general rule is restated from the older cases which are cited, as follows: 'A confession is not admissible unless it is voluntary, and the question whether it is voluntary (when raised by conflicts in the evidence-interpolated) must be determined in the first instance by the presiding judge, but the jury must be the final arbiters of such fact.' That this is in accord with the weight of authority elsewhere is demonstrated in the annotations in 18 L. N. S. 777, 50 L. N. S. 1078, 85 A. L. R. 870, and 170 A. L. R. 567. Our modern decisions are digested in 85 A. L. R. at pages 895-6 and 170 A. L. R. at page 595. However, the rule is an old one in this jurisdiction. *State v. Kirby*, 1847, 1 Strob. 378. The opinion in the case just cited was quoted with approval in *State v. Branham*, 1879, 13 S. C., 389, to the effect that a confession is admissible though it is elicited by questions, whether put to the prisoner by a magistrate officer or private person; and the form of the question is immaterial to its admissibility, though it assumes the prisoner's guilt" (R. 212-215).

We concede that, under the law as declared by this Court in the cases cited by petitioner's counsel:

(a) Where the claim is made of denial of due process in a state court by obtaining a conviction through use of a confession procured by coercion, this Court is bound to make an independent examination of the record to determine the validity of the claim. And,

(b) In ascertaining whether the use of a confession in obtaining a conviction violated and constitutional requirement of due process, this Court will, where the evidence as to the methods employed to obtain the confession is conflicting, accept the determination of the triers of fact as to its voluntary character, unless such determination is so lacking in support in the evidence that to give it effect would work

that fundamental unfairness which is at war with due process.

However, we most respectfully submit, that the testimony and circumstances under which the confession was made in this case are not comparable to the testimony and factual situation which was evident and proven in the cases cited and relied on by petitioner's counsel to sustain their contention.

As stated in the opinion of the South Carolina Supreme Court, "Those cases involved incidents of fear of mob violence, wholesale arrests without warrants, all night questioning by relays of officers, proven physical mistreatment, transporting from county to county for questioning and even torture. The defendants in some of these and similar cases were ignorant and illiterate youths; unlike appellant who is an apparently intelligent young adult. None of the vitiating influences which were mentioned were present here." And we might add, that the recent case of *Haley v. State of Ohio*, 92 L. Ed. 239, the latest case on this subject with which we are familiar, likewise has no application here. For in that case the accused was a mere boy fifteen years of age and the facts there reported differ materially from the facts of this case.

Assuredly, we submit, the cases of *Chambers v. Florida*, 309 U. S., 227, 84 L. Ed. 716; *Brown v. Mississippi*, *supra*; *Ashcraft v. Tennessee*, 322 U. S., 143, 88 L. Ed. 1192; and *Malinsky v. New York*, 324 U. S., 401, 83 L. Ed. 1029, so oft recited and insistently relied on by counsel, have no application here. We unhesitatingly state that, if the facts of this case were similar or had any ear-marks to the facts revealed by this Court's opinions in those cases, it would have never reached this Court. And so for the reason that a directed verdict for the petitioner would have been granted on our own motion.

The South Carolina Supreme Court finds and holds that the case of *Lyons v. Oklahoma*, 322 F. S., 596, 88 L. Ed. 1481, is here applicable; and in so finding and holding, we respectfully submit, there was no error. As said by the Court in that case: "But where there is a dispute as to whether the acts which are charged to be coercive actually occurred, or where different inferences may fairly be drawn from admitted facts, the trial judge and the jury are not only in a better position to appraise the truth or falsity of the defendant's assertions from the demeanor of the witnesses but the legal duty is upon them to make the decision. *Lisenba v. California*, *supra*, 314 U. S. page 238, 62 S. Ct. page 290, 86 L. Ed. 166."

Quoting the words of Mr. Justice Frankfurter, as expressed in his concurring opinion in *Haley v. State of Ohio*, *supra*, "this Court's reversal of a State court's conviction for want of due process always involves a delicate exercise of power."

The petitioner has had a fair and impartial trial before a learned and conscientious judge who, with exceeding care, safeguarded petitioner's rights in every phase of his trial. He was adjudged guilty by a jury. He was represented upon his trial, in the Supreme Court of South Carolina, and now in this Court, by three experienced lawyers who have discharged their duty with exemplified zeal, skill and ability.

Upon appeal, the Supreme Court of South Carolina has affirmed the conviction and judgment of the trial Court, Mr. Justice Stukes, a very able, exceedingly careful and most conscientious jurist, saying in the closing sentence of the opinion: "The judge who presided over the trial is recognized as a very able one and no sane jury could have honestly rendered any other verdict than guilty, in view of the confessions."

For the reasons aforesated and upon the record herein,  
we respectfully submit that the judgment of the Supreme  
Court of South Carolina should be affirmed.

Respectfully submitted,

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